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IMMORAL AND UNCONSTITUTIONAL:

—OUR—

ACCESSORYSHIP LAWS.

A Postscription to the Chicago Anarchists' Case.

BY ADOLF HEPNER.

NEW YORK LABOR NEWS COMPANY,
25 EAST FOURTH STREET,
NEW YORK.

IMMORAL AND UNCONSTITUTIONAL:

—OUR—

ACCESSORYSHIP LAWS.

A Postscription to the Chicago Anarchists' Case.

By Adolf Hepner,
Editor of the St Louis "Tageblatt"

New York:
THE NEW YORK LABOR NEWS COMPANY,
25 East Fourth Street.
1888.

S. L. P. PRINTERY.

INTRODUCTION.

THE following two letters, addressed in behalf of the doomed Chicago Anarchists, to their chief counsel, Capt. Black, in September and October, 1887, have nothing to do with anarchy, nor with the question of the guilt, under the existing laws, of the Chicago anarchists.

As to myself, I am not an anarchist, but a Socialist.

It will rather be shown that, irrespective of the judicial value of the decisions of the Courts in this case—those laws of accessoryship, under which the anarchists were tried and sentenced, are grossly immoral and unconstitutional. It will also be shown that those laws are liable to *foster crime* and *endanger mankind*. And finally it will be shown that my argument, which was suggested to the defense of the sentenced men, would have offered them an opportunity of escape, of which no use was made by their counsel, nor notice was taken by the friends of the doomed men.

I don't blame Capt. Black for having neglected my theory. Capt. Black was overworked at that time; he sought relief and aid in the advice and co-operation of the three eminent jurists, General Pryor, General Butler and Hon. J. Randolph Tucker, and those three lawyers, at the cheap rate of $1,000 or more, submitted to the U. S. Supreme Court arguments which were blown away by the mere unfolding of the records of the lower Courts, showing the lack of legal foundation of their arguments in error.

The power of the Supreme Court of the United States in the Chicago case, as presented to them by counsel for "plaintiffs in error," was similar to that of a first-class professor of a medical college, whose help is sought for by other physicians attending a dying man.

The Chicago bomb case was hopelessly lost at the very beginning of the *collective* trial of the eight defendants, *when considered in the light of the accessoryship law*. There was only *one* means of escape, and it consisted of the radical measure of a legal contra-bomb, directed at the *constitutionality of that law itself*.

To this end my suggestion was directed, but it was not fully appreciated by counsel for the defense, and wholly ignored by the socialistic press.

I am not ashamed at all of my failure. My argument involves so deep a cut into the old English-American law tradi-

tion, that it is no wonder American jurists should hesitate to suddenly indorse my theory. My argument means nothing less than the abandonment of an old common-law notion, nothing less than the eradication of the idea of legal identity of principal and accessory.

My last effort to give publication to my rgument consisted in the following telegram, sent to the Chicago *Herald* on Monday, November 7, 1887, and published by that paper in the issue of Tuesday, November 8, 1887, stating the jurisdiction of the U. S. Supreme Court and reading as follows:

"PHILADELPHIA, Nov. 7, 1887.

"*Editor of the Chicago 'Herald:'*

"In response to the opinion contained in your leader of yesterday (pleading for Executive clemency to some of the doomed anarchists) reading as follows:

"'Common sense discriminates between the chief and the merely incidental criminals—' and in further reference to the fact that the eight anarchists were tried and sentenced as accessories, not as principals, I submit to you for publication the following statement relating to an opportunity neglected by counsel of the defendants of obtaining a writ of error on the ground of that discrimination alleged by your article. On Sept. 19 I published in the Philadelphia *Tageblatt* (German daily) an essay on the Chicago anarchists' case, in which I tried to show that the writ of error hardly would be allowed on the ground of technicalities, and I suggested that the defense should test and contest the constitutionality of the Illinois statute law itself, according to which the anarchists were sentenced. I proved that the American common and statute laws, according to which the accessory before the fact is to be dealt with as principal, are liable to foster crime and endanger mankind, contradictory to the aim of the Constitution of the United States, as delineated in its Preamble, to wit: 'to establish justice, and to insure domestic tranquility.' I submitted, in a more explicit way, my argument to Capt. Black, the chief counsel of the Chicago Anarchists. Captain Black answered me that my argument had consideration, and he hoped to profit by my suggestions, but I finally saw that my argument was neglected by counsel. It may be argued, indeed, that the question raised by me was not pointed out in nor decided by the lower court, and that therefore my argument would be dismissed by the Supreme Court for want of jurisdiction, the same way as General Butler's point was dismissed, because it was not recorded in the lower court. But I wish to call the attention of the jurists of the country as to the doctrine of 'waiver' to the following passage of Hillard's 'Law of New Trials:' 'Where a defendant suffers default and fails to take advantage below of points open to him, without a satisfactory cause, he will be held to have waived them. That he relied upon a previous decision of the Supreme Court on a certain point is sufficient cause.' This aims to show that my argument, though not pleaded in the lower court, warranted the jurisdiction of the United States Supreme Court, for the American accessoryship law never was doubted as to its constitutionality, though Blackstone himself made the following remarks on that subject matter: 'Perhaps if a distinction were constantly to be made between the punishment of principals and accessories, the latter to be treated with a little less severity than the former, it might prevent the perpetration of many crimes by increasing the difficulty in finding a person te execute a deed itself, as his danger would be greater than that of his accomplice by reason of the difference of his punishment.' My argument, indeed, is based on another ground. I proved that the laws treating the accessory to the punishment of the principal prevents the 'tempted' person from withdrawing from the plot, or rather compels him to consummate the deed, and that therefore that law is unconstitutional.

ADOLF HEPNER."

A similar telegram, sent the day before, on Saturday, November 6, for the New York *Herald*, did not succeed in getting admittance to the sacred columns of that paper.—*Philadelphia, November* 11, 1887.

For some particular reasons this publication—made ready for print on Nov. 11, 1887, was delayed till now—*the first Anniversary of the Chicago Execution*, Nov. 11, 1888.

THE LETTERS.

I.

PHILADELPHIA, Sep. 29, 1887.

To CAPT. W. P. BLACK (of Chicago),

New York, c | o General Pryor.

SIR:—Ten days ago I published in the Philadelphia *Tageblatt*, an essay on the Chicago anarchists' case, diverging from the common belief that the Supreme Courts, both of the State of Illinois and of the United States, could likely annul, on the ground of technicalities, the decision of the Court of Cook County. I concluded, however, that essay with the assertion and the proof, that another and better way remains open for the defense, to wit: "Contesting the constitutionality of that Illinois criminal law according to which the defendants were sentenced."

Your Illinois statute provides for the punishment of instigation or conspiracy, to wit:

"Mere instigation or conspiracy in the absence of an overt act or of a perpetrated crime is punishable by a fine not exceeding $1,000 or imprisonment in the penitentiary not exceeding three years." On the other hand, where the crime has been committed, he who has aided, advised or encouraged the commission of the crime shall be punished to the same extent as if he himself were the doer of the crime; and the accessory before the fact can be indicted and punished without principal having first been convicted the or punished.

To prove the unconstitutionality of that law, I shall have to explain some principles on which Justice is founded.

The purpose and aim of all penal laws, of all universal legislation, is to protect humanity, to prevent crimes.

Should it therefore appear that any criminal law be of such nature as to contradict said purpose and aim, i. e., should it appear that any criminal law be liable to endanger humanity, to foster crimes, such criminal law must be declared null and void on account of its unconstitutionality; for the Constitution, in its Preamble, proposes to "establish justice, to insure domestic tranquility."

Now let us see how that Illinois law is apt to "establish justice, to insure domestic tranquility."

All modern criminal legislation adopted the principle of a difference in punishment of a perpetrated and attempted criminal act. Why? For two reasons; in order to prevent crimes and to protect threatened mankind. The law aims to give a person who attempted to commit a crime a chance to defeat his criminal thought and to return to honesty. That allowance, consisting of a minor punishment, granted to a penitent sinner, who bethought himself of his criminal idea and left off, is of course not due to him, but to the person against whom the crime was aimed. This innocent person we want to protect against foul play. And we cannot do so except

by granting to the "tempted" person an allowance for his refraining from perpetrating the crime. Therefore an attempted crime must be punished, if at all, by a measure lesser than provided for the perpetrated crime. It is the person threatened by such crime that we owe such protection against "injury." Were we to punish the attempt and the perpetration of a crime alike, we would thereby endanger humanity and foster crime. So the "tempted" person would reason: "It is all the same whether I continue, or discontinue; my punishment will be the same; therefore I shall finish the crime."

This way, I should think, I have stated the principle beyond all doubt, that putting on the same grade both the perpetration of and the attempt at a crime, would be highly immoral, fostering crime, endangering mankind; in a word—unconstitutional.

Now let us see what there is about the notorious Illinois law. It is no matter, whether or not that statute law emanated from common law; truly, it did; but that makes no difference.

That Illinois law constitutes the following degrees of criminality:

1. Instigation or conspiracy in the absence of an overt act.

2. Accessoryship before the fact or perpetration by principal.

We may see that our principle, explained above, was recognized by the Illinois law, inasmuch as it fixes the penalty for instigation or conspiracy to not more than three years' penitentiary, while the perpetrators may be punished with death.

Why did the law create that difference? In order to grant to the "tempted" instigator or conspirator a premium for withdrawing from his criminal thought; in order to influence him by such allowance, that he might as soon as possible redress his wrongs and dissolve the conspiracy. For the "instigator" or "conspirator" or any other assisting in crime, any "accessory," ranks among the "tempted" ones.

But your Illinois law, though recognizing the principle, explained above, failed to thoroughly administer it, inasmuch as your law granted to the accessory that allowance in the absence of an overt act only, while, in the case of commission of the crime, it puts the accessory on the same grade with the principal. And this law is immoral and unconstitutional because it is liable to foster crimes, to endanger mankind, as may be seen from the following:

Take for granted, that ten persons conspired to throw bombs at the police in an open-air meeting. In the last moment, however, nine of the ten conspirators repent their idea and show their willingness to withdraw from the plot, while the tenth man stubbornly insists on executing the deed.

What shall the nine men do? They would reason as follows:

"Though we are now withdrawing from the plot and are willing to keep our bombs in our pockets, we would be hanged if the tenth man threw. For the accessory is equal to the principal, when the crime is committed. The tenth man insists in his purpose and his deed cannot be averted any more. And certainly he will be captured, and so shall we. As our fate thus is sealed, and we will be hanged in either case, let us rather throw our bombs, too."

Now, look; if the tenth man alone would throw, ten policemen would perish; if all ten conspirators threw, a hundred policemen would die. It is certain, therefore, that ninety out of a hundred policemen could have been saved if the law had granted an allowance to the accessory, even in case the deed were committed. The responsibility for those ninety policemen's lives lies on your law.

For nine men were willing to withdraw, but they saw no use of it, if their fate was the gallows in either case.

Such a law is fostering crime and endangering mankind, is highly immoral and thoroughly unconstitutional, because it involves an "injustice" to innocent persons threatened with assault.

The aim and purpose of all criminal laws are to prevent crime and to protect humanity, and any law defeating such aim and purpose is unconstitutional.

Sir, such was the third part of my essay. And I challenge all jurists of the country to show why my plea should not be heard.

After all my endeavors to call the attention of the German-American press, and especially of the German-socialistic press to my theory, proved a failure, I sent an article explaining my theory to the New York *World;* but they declined, as usual in such cases, excusing themselves with the old customary phrase, "the pressure upon our columns."

I now submit my theory to your consideration. Respectfully yours,

ADOLF HEPNER.

II.

LAW OFFICES W. P. BLACK,
108 Dearborn St.,

CHICAGO, October 7, 1887.

ADOLF HEPNER, Esq.,
c | o Philadelphia *Tageblatt*,
613 Callowhill St.,
Philadelphia, Pa.

Dear Sir:—I have this morning received your letter postmarked Philadelphia, September 28th, and remailed to me from New York, September 29th. I thank you for the suggestions therein contained, which I have read very carefully, and to which I shall give further consideration. The practical immorality of the Illinois law of accessoryship, I think, admits of little question, as applied to any such case as our own. The great trouble in an argument upon its unconstitutionality is, that the courts generally, in the construction of such a statute, allow to the accused the benefit of the *locus pœnitentiæ;* and if proof be adduced of the *prior* advice, encouragement, incitement or abetting of a particular crime, it is open to the accused to show, by way of defense, that before the commission of the crime advised he withdrew from the conspiracy and to his utmost sought to prevent the accomplishment of the crime. In other words, the statute, under a proper construction, is aimed simply to take a man who is morally responsible for the consummated offense, on the ground that he is a coactor or principal, is established clearly from the proofs. The trouble with the statute is that it is liable, in times of great public excitement and under circumstances of intense general prejudice against the accused, invading even the judiciary, to be made an instrument in the accomplishment of injustice for the fostering of crime. But upon the question of the constitutionality of the act, does the the unconstitutionality thereof appear because it may be wrested from its true purpose, which is, to prevent the combination of men to bring about a crime through the employment of some unscrupulous instrument, in a case where the conspirators might themselves hesitate to commit the overt act?

Let me assure you again, however, that your suggestions have consideration, and that if I find I can use your line of argument to advantage in going before the Supreme Court of the United States, I shall be happy to avail myself of your permission. Meantime, I thank you for your consideration in the matter, and for calling these things to my attention. Yours truly,

W. P. BLACK.

III.

PHILADELPHIA, Oct. 11, 1887.

To CAPTAIN W. P. BLACK (of Chicago),

c—o General Pryor, New York.

Dear Sir—In reference to your favor of Oct. 1, I wish to suggest that the alleged "benefit of the *locus pœnitentiæ*" accorded to the accused accessory before the fact cannot weaken my argument upon the unconstitutionality of the notorious Illinois conspiracy law. That "benefit" in many cases is valueless on account of the impossibility, on the part of the defendant, to prove beyond doubt his withdrawal from the conspiracy, for it must be borne in mind that an accessory—such as I took for granted in the fancied case in my letter of Sept. 28—in the moment of his repenting and of his willingness to withdraw from the plot would hardly deem it proper to call the attention of impartial witnesses to his delicate affair. That accessory in such a moment would be capable of one idea only, to wit, of escaping detection and punishment. Therefore, the more he would call the attention of impartial witnesses to the fact that he was about to withdraw from the plot, the more he would expose himself to detection. He is ready to withdraw, but not to make "all about the matter" public. He restrains, therefore, his efforts to quash the plot to his fellow plotters' circle. But the sworn depositions of these co-defendants on the witness stand have no full moral weight on any jury.

I don't see how my fancied nine accessories who, the} resistance of the

tenth man notwithstanding, withdrew in the last moment, could be able to prove beyond doubt that they really withdrew. The captured principal, the bomb thrower, that tenth man, might, for instance, say before the Court:

"They did not withdraw, but they decided to let me take the first trial step; should my bomb take effect, and should the crowd frantically rush upon the police, then they would second me and also throw their bombs; but should my bomb miss its aim, or should the crowd take flight, then they would keep their bombs in their pockets."

In this case, the principal, in all probability, would defeat the efforts of the accessories to prove that they really withdrew.

But besides that, the "benefit of the *locus pœnitentiæ*" proves itself to be of imaginary value, when we consider that the Court—according to the authorities—is at liberty to decide whether that withdrawal of the accessory were "at the right time" or "too late."

So Prof. Francis Wharton, in his "Criminal Law," ed. 1885, section 228, says:

"But it (the criminality of the withdrawing accessory) does not cease simply because, after starting the ball, he changes his mind and tries, when too late, to stop it. To emancipate him from the consequences not only must he have acted in time and done everything possible to prevent the commission, but the consummation, if it takes place, must be imputable to some *independent* cause."

Thus the "benefit of the *locus pœnitentiæ*" dwindles down to nothing. It was indeed "too late" to stop the tenth man in our fancied case, but not too late to reduce the number of persons threatened with death from 100 to 10; for, if all ten men had thrown their bombs a hundred persons instead of ten would

have been killed. Therefrom results that a withdrawal of an accessory never is "too late," not even in the last moment. And in order to save all that possibly could be saved, the accessory should not be put on the same grade with the principal.

It is originally not due to him (the accessory) that he should be granted the allowance of a lesser punishment than that of the principal, but it is due to threatened mankind, for the safe-keeping of which all laws are given.

Sir, he who could succeed in impressing the legal profession of America and the people in general with my theory, would not only save the lives of your seven clients, but perform the necessary task of sounding the signal for a reform of American law. And that reform must be accomplished. The erroneous belief that the main purpose of criminal law is "retribution" to the offender, must be supplanted with the higher idea that criminal law aims first at the protection of mankind and the prevention of crimes. From this view we provide for punishment of offenses in order to restrain people from the commission of them; and we execute the punishment provided by criminal law not merely for the sake of "retribution," but mainly to make true our threat and prevent the further commission of crime. Then comes, as a matter of secondary consideration, "retribution" for or correction of the offender.

This theory once accepted, the old common law or indictment of accessory as principal must be abolished. The old common law had in view nothing but "retribution," and from such a view, indeed, both the principal and the accessory may sometimes be heinous in the same grade; the accessory may even sometimes be more heinous than the actual perpetrator, as, for instance, if the accessory aids, advises, etc., with reflection, while the actual perpetrator may execute the plan in a state of great excitement. But sometimes the instigator may act in excitement, and the actual perpetrator, on the contrary, in cool blood. We cannot judge in general of the state of mind of either the accessory or the principal, and therefore we have to deny the justness of the principle that, in general, all concerned in the cammission of a crime are to be treated in the same manner. But on modern society the question devolves, What is more important, more worthy of consideration—the criminal on the one side, or threatened mankind on the other? Shall we have laws for protection of mankind, or only for "retribution" to the offender.

You see, sir, the error of that common law is founded on a principle familiar with a less cultivated society, with a society in which the notion that all laws must be in accordance with the interests of the whole people was unknown. It may be deemed, sir, a bold undertaking on the part of a citizen of so recent a date as I am, of a man who is no lawyer by profession, and of a writer in a position anythiug but commanding, to attempt the taking by surprise of a legion of learned jurists and experienced statesmen of America, and of undermining the old fortress of criminal law by the sudden cry of "immorality and unconstitutionality." And I know only too well the difficulty of destroying opinions familiar to the people for centuries; nor am I ignorant of the suspicion with which the ignorant regard "foreign" ideas. I have meditated on this subject—this matter of fighting the constitutionality of the law on accessoryship—a whole long year. I weighed all chances pro and con, and have finally come to the conclusion that the "accessory" law of this country is immoral, unjust, unconstitutional, and that there

is no other way of rescuing your seven clients than by proving that the Illinois law, according to which they were sentenced, is unconstitutional. And therefore I applied to you, after my endeavor to interest the American press in the question of the unconstitutionality of the Illinois law proved unsuccessful. You are, sir, in a position to make my theory creditable. The importance of my theory does not depend upon the opportunity alone of saving the lives of the condemned anarchists, but also on the reform of American law, which my theory is intended to effect. My theory has nothing to do with anarchistic methods or principles, nor even with the case itself of the Chicago anarchists. I am no anarchist; I firmly believe in the necessity of peaceable progress. Otherwise I certainly would not care for the reform of American law. I fully conceive sir, that you, an American, educated in the old common law, are not so soon ready to surrender to my theory as I might wish. It requires much consideration to abandon old theories in which we grow up. But, when we consider the manifold changes that common law on accessoryship has undergone hitherto, we should not refrain crom going a step further.

Let us review those changes.

Blackstone, in his book 4, chapter 3, remarks "on the different degrees of guilt among persons that are capable of offending, viz., as principals and accessories:

I.—"A man may be principal in two degrees. A principal in the first degree is he that is the actor or absolute perpetrator of the crime; and in the second degree he who is present, aiding and abetting the fact to be done. Which presence need not always be an actual, immediate standing by, withiu sight or hearing of the fact, etc."

Well, so far as concerns principals in the first and principles in the second degree, the distinction is now almost generally obliterated.

II.—"An accessory is he who is not the chief actor of the offense, nor present at its performance, but is in some way connected therein, either before or after the act committed."

Contrary to this definition the Illinois statute law declares:

"An accessory is he who stands by and aids, etc., or who, not being present aiding, hath advised, etc."

According to old common law an accessory present at the commission of the crime is a principal. See Blackstone, same chapter, and Wharton's "Criminal Law."

The old common law, accorhing to Blackstone, restricts accessoryship to felonious act. "In high treason there there are no accessories, but all are principals, on account of the heinousness of the crime; in all crimes under the degree of felony there are no accessories, but all principals, because the law does not descend to distinguish the different shades of guilt in petty misdemeanors. So the same rule holds good with regard to the highest and lowest offenses; in murder and felony there are accessories."

This rule was manifoldly changed in this country, as to treason as well as to felony. It was changed to the better as to treason, inasmuch as some minor political offenses, that could be construed as leading to treason, were exempted from same. Section 5335 of the Revised Statutes of the United States deals with citizens' intercourse with a foreign government to the intended detriment of the government of the United States; that is practically accessory to treason, though the law on this crime is now formally independent from the law on treason. In a certain sense we have, indeed, in Section 5335, a law providing for "accessory to treason."

That common law on accessoryship was further changed to the better as to accessoryship *after* the fact; and it was finally changed to the worse as to accessoryship *before* felony, as we saw from the Illinois law and the laws of about seven other States, who abolished accessoryship, even in felony.

Therefrom the lack of any system is evident. The principle, indeed, of putting the accessory on the same grade with the principal is so stupid that it cannot be systematized. The reasons of that principle, as indicated by Blackstone, are of a rather frivolous character.

There will certainly come a time when the people of the United States will be astonished that such a stupid law was maintained for centuries by the most enlightened readers of the country. And, sir, let it be remembered that there will be no excuse for the learned jurists of this country for not having been properly warned. *Blackstone himself has warned you in the plainest terms.*

I should like to call the especial attention of American jurists to the following passage in the chapter cited above of Blackstone's commentaries:

"Perhaps, if a distinction were constantly to be made between the punishment of principals and accessories, the latter to be treated with a little less severity than the former, *it might preven the perpetration* of many crimes by increasing the difficulty of finding a person to execute a deed itself, as his danger would be greater than that of his accomplices, by reason of the difference of his punishment."

You may see, sir, that Blackstone, though he came nearer to the truth 140 years ago than the jurists of to-day, did still not fully strike the point. He imagined, indeed, the danger from the law on indictment of accessory as principal, but his opinion did not rise and ripen to a firm conviction and a full belief. Nor did he conceive that, in consideration of the possibility of a danger such as imagined by him, the abolition of such a dangerous law should be made in the interest of mankind, *conditio sine qua non.*

Blackstone, like all his contemporaries, had in view only the *offenders*, not the *world threatened by them.*

Sir, now let me remark how my theory on the immorality and unconstitutionality of that common and statute law on equality of accessory with principal grew up in my conviction.

I abstracted my theory from the German penal law. The idea that an allowance should be granted to the accessory was indeed not fully recognized in German law, but its fundamental principles were understood. The German criminal code provides for accessoryship before the fact as follows:

I.—"*Co-action* of several persons in perpetration of any offense or crime. Every co-actor is principal.

(Decision of the Supreme Court of Germany: "A *material* co-action for the perpetration must have taken place. Mere cognizance or approbation of the punishable act is no 'co-action.'")

II.—*Instigation*, by money or promise, by threats, or by misuse of power and position, or by purposely generated error, or by other means.

The "instigator" of the perpetrated act is to be punished as principal, but—according to the provisions of the supreme Court—an "instigation" must be referred to a *specified* action; "a *general* direction for future action is insufficient.

III.—*Assistance* in offense or crime by advice or action.

The "assistant" is different from "co-actor" and "instigator," and the law *expressly* provides that he shall be punished according to the rules set forth for "attempt;" that is to say, with a lesser punishment than that of the principal.

Sir, that German law is indeed not fully satisfactory to the requirements of my theory, but it accords at least to the "assistant" the benefit of a lesser punishment, *to prevent him from becoming a co-actor.* And as to that allowance the German law makes no difference between felony and misdemeanor.

That mixing up of accessory with principal is a specific monster of the old English common law, a relic of barbarous antiquity.

Perpetrating such nonsense, such immorality, such dangerous "criminality at law," should be prevented by all enlightened men.

And in order to aid in abolishing that law I refer to its "unconstitutionality" and point to the fact that the Constitution of the United States in its Preamble promises to "establish justice, to insure domestic tranquility," while, on the contrary, that law on suppressing accessoryship is liable to *foster crimes and to endanger humanity.*

ADOLF HEPNER.

IMMORAL AND UNCONSTITUTIONAL:

OUR ACCESSORYSHIP LAWS.

"To What Extent Does the Eleventh of November Affect the Anti-Anarchist Workers?"

AN ADDRESS BY ADOLF HEPNER.

IT is very difficult for one who enjoys life to have a correct idea of the feelings of a man who, for the sake of his convictions, *goes* to his death or is *driven* to death.

I say deliberately "*goes to* or is *driven* to death," because I hold that the great majority of those who have forfeited their lives for their convictions had no conception of the consequences of their first steps, and for the most part could not even picture to themselves the results of their modes of thought.

History, ancient and modern, tells of martyrs who were originally inclined to far different lines; unintentional martyrs by chance, martyrs through combinations of unfortunate and uncontrollable circumstances, martyrs by mistake martyrs through the unexpected consequences of the logic of facts. In such various ways, my friends, may a man become an involuntary martyr, be driven to death.

These involuntary martyrs must not be confounded with those who voluntarily died.

I call him a voluntary martyr who dies with the full knowledge of what awaits him, and risks his life for another or for the welfare of society. Such a one, for instance, was Robert Blum, who was shot on the 10th of November, forty years ago; and such a one was John Brown, in whose honor fifty millions of Americans sing "Glory, glory, hallelujah!" Both the voluntary and involuntary sacrifices on the altar of the people's cause are martyrs; their ending is the same, but their beginning was different.

The voluntary martyr has made quits with life before he enacts the deed that may cost him his life, as does the soldier at the commencement of battle.

The involuntary martyr, on the contrary, never dreamed what the result would be as be decided upon the course

that brought him to his end. He never intended to risk his life, or at least did not intend to lose it for a trifle.

If you agree with me in the distinction I make between voluntary and involuntary martyrs, you will readily understand why I began with the sentence: "It is very difficult for one who enjoys life to have a correct idea of the feelings of a man who, for the sake of his convictions, *goes* to his death, or is *driven* to his death."

My opinion is that the voluntary martyr is better off than the involuntary, for the former goes to his death in the intoxication of enthusiasm, while the latter is *led* to the place of execution after he has used all possible means to escape in vain; for he has not sought death, but intended by *living* to accomplish his task. And he was right.

It is easy enough to say that man should be at all times ready to die for his convictions. Many have pronounced this sentence, but very few have carried it out. To these few belonged the majority of the defendants in the Chicago anarchist trial, whose thread of life was forcibly torn asunder a year ago.

To the discussion of this shocking event we shall devote the hour. I have selected the theme, "To What Extent does the Eleventh of November Affect the Anti-Anarchist Workers."

This expression makes it my task to first point out what brought about the tragedy of the 11th of November.

Then we shall have to judge of cause and effect, and determine which it is that calls forth the sympathy of the whole labor world; for, although the cause—the bomb-throwing at the Haymarket on May 4, 1886—does not affect the labor world, the result—the execution of November 11, 1887—certainly does.

At a casual glance the cause and effect of the Chicago tragedy of the 4th of May, 1886 and the 11th of November, 1887, stand in natural connection. Therefore it might be thought that because we disavow the 4th of May—the bomb-throwing at the Haymarket—we could indifferently pass over the 11th of November—the execution of the convicted ones.

Let us render a truthful account of the *cause*.

The Chicago anarchists differed from the political labor organizations not only in the matter of theory, but in their own tactics. While the other political labor organizations preached historical development, the Chicago anarchists held, as a more revolutionary party, that the workers should, by rapid *action*, assist historical development. Consequently the Chicago anarchists considered it necessary to hold themselves prepared for the time when a favorable opportunity for revolutionary action should present itself. This preparation consisted in armament, in drill, and in procuring *dynamite*.

To be sure, there existed no plan looking toward a certain time of action, but

prepartion was made "at large" to meet the time when the use of force *against* force might seem advisable or necessary.

Thus it happened that, on the 4th of May, 1886, when the police illegally set about dispersing the meeting at the Haymarket, a person, unknown up to the present day, threw a bomb at the police with well known effect, in order to meet force with force.

The perpetrator did not act upon the command of others, but independently.

Not being able to find the bomb-thrower, seven anarchists was arrested who had for some time advocated and defended the use of force against force, and had, presumably, also engaged in procuring dynamite.

The prosecution was based upon a law which inflicts an equal penalty upon the intellectual originator with the perpetrator of a deed when the deed has been accomplished.

This is in short outline a resumé of the *causes* of the 11th of November.

I said previously that the anti-anarchist workingmen disavow the 4th of May, 1886; not because, forsooth, they object to the logic of the sentence, "Force against force," but because they were opposed to anarchistic tactics generally, consisting of unnecessarily *alarming* the enemy.

The anti-anarchist workingmen incline to the opinion that while the power of our opponents is so far-reaching, every attempt to alter social conditions by the use of physical force must end in a fiasco. For this reason they consider *preparations* for the use of such force—as were made by the Chicago anarchists—as useless and even harmful.

The anti-anarchist working people believe that powerful outbreaks of the people's will occur as do those of the elements of nature, without long preparation, without order, and without notice.

The anti-anarchist *organized* workers further believe—mark it well—*that the emancipation of the working class from the yoke of wage slavery is less hindered by the resistance of the possessing class than by the apathy of the workers themselves.*

The emancipation of the working class would long since have been accomplished if it were conditioned only upon breaking the opposition of the possessing class; for the non-possessors form a twenty-fold stronger power. It is not the possessors, against whom every weak attempt would fail, but the majority of the *unorganized workingmen* who throttle every aspiration for freedom.

Our chief opponents are to be found in the ranks of the workingmen, as has been proved in many an election.

The masses stand on the side of their oppressors, and against this mass one little band cannot successfully battle.

Therefore we see that the principal mistake in anarchist tactics lies in their unfounded confidence in the masses. The anarchists believed that only a *signal*, a *rousing cry*, a surprising "deed"

was needed and the people would comprehend the sign and rally to shake off the rule of capital.

We have seen how the people valued the 4th of May.

Did the masses rally to prevent the dispersing of the Haymarket meeting?

And where were the hundreds who had drilled in the "Lehr und Wehr Verein?"

Where were the thousands who joined with the anarchists in many a gigantic mass meeting, in swearing to put a speedy end to capital's reign?

Anarchist tactics proved a monstrous mistake.

And this mistake cost five men their lives; great-hearted Albert Parsons, the highly gifted August Spies, brave George Engel, unswerving George Fisher, and the fiery youth, Louis Lingg.

When I say that these five men fell victims to an error, it does not disgrace them. To err is human.

We mourn and deplore that an error which the world would easily excuse in others, should have been so barbarously and cruelly avenged upon these five men.

And here we come to the actual consideration of the question, "In how much does 11th of November concern the anti-anarchist workers?"

No workman—no matter how much he opposes anarchist tactics—can let the tragedy of the 11th of November pass before his mind's eye, without the thought and consciousness that:

"Closely considered those five men forfeited their lives for the cause of labor! You are indeed not a partner in their way of looking at things, and if they lived to-day you would oppose them; but the error of their life was not their private affair, but their method of hastening the emancipation of the working class. In this light they are not only martyrs of anarchism, but also martyrs to the labor cause, which they served with body and soul."

True, my friends, I cannot hide the fact that the martyrdom of those five men who were done to death by a brutal "justice" was useless. The condemned were confident, up to the last moments of their lives that their death would be considered by the working class as a crime against themselves. They still believed, and that was their deep-rooted error, that they had the masses behind them.

And yet, how noiselessly did the masses permit the hangman to perform his office on the terrible 11th of November!

The only thing which the "masses" did was to decently support their bereaved families, and give the dead an imposing burial.

To my knowledge the 11th of November left no lasting impression upon the minds of American workingmen.

The unfortunate men who were condemned mistook the universal sympathy the workers of the country expressed for a *kindredness of mind*. This error

of the prisoners was certainly pardonable. But the living do wrong when they adopt that error and spread it in spite of better knowledge.

The labor movement in America has in no way been furthered by anarchist tactics; on the contrary, it has manifestly suffered under it; and if all signs are not deceptive, the anarchists themselves have come to the conviction that a repetition of the 4th of May is anything but desirable.

And now that I have spoken against anarchist tactics, I cannot, for justice's sake, refrain from pointing out an item of defense for them, even if it is only to show that the Chicago defendants would not have been sentenced to death had they been serving any other cause than the cause of Labor.

Let me remind you, my friends, of the American practice of lynching which even to this day exists in the Western and Southern States; how seldom the courts dare to prosecute lynching parties, let alone to sentence, especially when their victim is a negro.

In the State of Illinois, but two months since, a negro was lynched against whom a young girl brought the charge of rape. It turned out afterwards that the girl had for a long time led a life that was anything but virtuous, and was in every way untrustworthy. But aside from this special case:

What is offered in extenuation of lynching?

The belief, justifiable or unjustifiable, that the criminal would escape justice, or that justice would permit the crime to go unpunished. This belief excuses so-called "people's justice;" excuses even to-day the murder of *suspects* against whom no clear evidence is at hand. Now, if lynching shall go unpunished, it would seem that the Haymarket affair of the 4th of May should not be an object of complaint. For the unknown bomb thrower did nothing but exercise lynch law against the police who were engaged in a criminal act, because he thought that they could not be brought to any account by any other method or placed under penalty. I regret that the *influence which the American usage of lynching had in the culture of anarchist tactics* was not once considered during the whole trial, and presented as an extenuation.

The State of Illinois should in no case have punished the alleged or real intellectual instigators or accessories with death as long as lynching parties—acting on the same principles as did the bomb thrower of the 4th of May—remain unmolested.

To determine, then, what interest the anti-anarchist workingmen have in the tragedy of the 11th of November, we must, of course, disavow anarchism, but recommend its sacrifices to the faithful memory of the people, because they acted in good faith, believing they were hastening the emancipation of the working class.

Certain it is that those five men had

not suffered death if they had not been *labor agitators*. You all know how little human life is valued in America. Year after year hundreds of persons are shot down for a careless word—the thoughtless expression "liar"—without resulting in a sentence of death. And these five men, whose connection with the bomb thrower was never proved, were done to death as an act of revenge for the prominent part they played in the class conflict of the workers.

The *bourgeoisie* pardons more than a bomb; otherwise Jefferson Davis and other venomous archrebels who have the lives of hundreds of thousands upon their consciences, would not be alive to-day. But for *labor agitators*, for people who dispute the right of the rich to enjoy wrongfully gotten wealth, there is no thought of pardon with the ruling class.

The anti-anarchist workingmen were reconciled to the sacrifices to the ruling class the moment their danger became apparent, *i. e.*, as soon as the trial proceedings showed that justice was led astray through suborned witnesses for the State.

And not only was justice mocked by the acceptance of the testimony of traitors, of terrorized and paid ex-anarchists, such as Waller and Seliger, but also by that of detectives who were hired to join the military organizations of the anarchists and tempt them to transgressions.

As circumstances existed after the acts of the first trial, there was little to hope for for the accused by opposing the sentence upon the plea of nullity.

Complaint has been made that the Supreme Court did not reverse the decision. But while it may be admitted that the Supreme Court found it satisfactory to be able to sustain the sentence, the indications by no means show that it was possible to reverse the sentence.

The Supreme Court of the United States is bound by certain rules; it cannot without ceremony reverse a decision because a lower court has committed errors of form; but the aggrieved must show that those errors materially influenced the judgment, and that if those errors had been avoided the sentence might have been another.

I openly confess that when I had read and studied the decision of the Supreme Court of the United States I said to myself: "If you had been in the position of the Supreme Court, you would have been puzzled what to do with the writ of error." For the declarations of invalidity of the celebrated counsel, Gen. Butler, General Pryor and the Hon. Tucker were totally unfounded. Even if the Supreme Court were inclined to be friendly toward the prisoners it could not have granted the writ of error, for the lawyers brought no argument forward which would *compel* the judges to grant a writ of error.

There was in my opinion but one method of obtaining a writ of error from the Supreme Court, and that was in attack-

ing the constitutionality of the law which was at the foundation of the indictment and the sentence.

I will develop my theory:

In September, last year, I turned to Captain Black, the principal defender in the Chicago anarchist cases, and explained to him as follows:

The trial is lost; petitions to annul based upon technical errors cannot save the cause.

Let us do as the millionaires and monopolists do, when the law threatens to circumscribe their action—*contest the constitutionality of the law upon which the indictment is based.*

You know that the monopolists have many a time won a victory over the workingmen by such a proceeding; I only need remind you of the law prohibiting tenement house cigar making in New York, which was declared "unconstitutional."

But the matter must not rest with the mere contesting of the constitutionality of the law; *proof* must be brought.

The Illinois law, upon which the indictment of the anarchists rested, reads:

"Where a crime has been committed, he who has aided, advised or incited (the accessory before the fact) is to be punished as if he were the principal."

This law, I say, is unconstitutional.

The Constitution of the United States, according to the words of the preamble, has for its purpose "the establishment of Justice, and to insure domestic tranquility." Now, if it can be proved that a law acts contrary to the promise of the Constitution, that law is unconstitutional.

If we can show that the penalty paragraph about the accessory before the fact, instead of "establishing justice" *promotes crime*, that is, injustice, and that instead of "insuring tranquility" it *endangers the citizens*, we shall win.

Very well, then; I will prove that every law which admits of no difference between the principal and the accessory before the fact, promotes crime and endangers the lives of citizens.

Let us assume that there are ten conspirators, who have each agreed to throw a bomb at a certain time.

Shortly before the appointed moment nine of the ten bethink them and say, "No; let us not do it." The tenth, however, is stubborn and says, "I shall throw—you can do as you please."

In what position are the men who would give up the plan?

They say to themselves, "Since the tenth dissents, and will at all events throw a bomb, our retreat can be of no benefit to us. For, whether we do the deed or not, we shall under any circumstances be equally punished with the tenth, who will not spare us, but rather will denounce us out of revenge if he is caught.

"If, then, we are doomed to death anyway, it will be better to throw the bombs."

Do you see the consequences of the law?

If the law recognized a difference between the principal and the accessory, punishing the latter less severely, in order that he might, at the last moment, have an interest in withdrawing from the conspiracy, the nine would not have thrown their bombs. One bomb, say, kills ten; ten bombs kill one hundred. Ninety human lives would then be saved if the nine conspirators were not induced by the severity of the law which punishes the accessory equally with the principal to follow the example of the tenth conspirator.

The nine would gladly have withdrawn from the conspiracy, but the tenth would not have it so. He said to them, "You fools! If I am arrested you must share my fate. And even if I escape, and it is understood that you were my co-conspirators, you will be hanged, while I, the principal, remain in hiding. I shall not tolerate any traitorous action on your part, you may be certain."

Under such circumstances the nine permitted themselves to be moved to act with the tenth; simply because withdrawal would have no practical value for them.

For the nine bombs and their consequences—the killing of ninety people—the law is responsible. It *promotes crime and threatens the security of the citizens.*

Therefore it is unconstitutional.

This, my friends, is my theory. It is founded upon such natural logic that in the course of time people will wonder how a great nation of sixty millions could so long fail to comprehend it. For that treatment of the accessory as principal in case of petty misdemeanor and felony is ancient Common Law. Here and there this Common law was slightly altered; in the State of Illinois, so far as the accomplished deed is concerned, it is incorporated in the statutes.

Under German law, of all the numerous accessories before the fact, only he is punished as a principal who has by specified acts assisted in carrying out the deed, all other accessories, that is, all who by advice or acts assisted without having been actively engaged in the main crime, are punished for "attempt;" that is, a premium is offered them to withdraw before the final criminal act.

The only exception in which an "attempt" is considered equal to a deed, is an attempt at regicide.

In September, last year, I carried on an extensive correspondence concerning my theory, as I have said, with Captain Black. He promised to give it consideration. The board of defense did not adopt the theory, however. Why not? The reason is unknown to me. It was impossible for me to obtain information from Captain Black.

I have, for certain reasons, been silent for a year. Now I will make public my views. No doubt there will be opportunity to contest the accessoryship law in some non-political case, and obtain a decision from the court of last appeal. It may take some

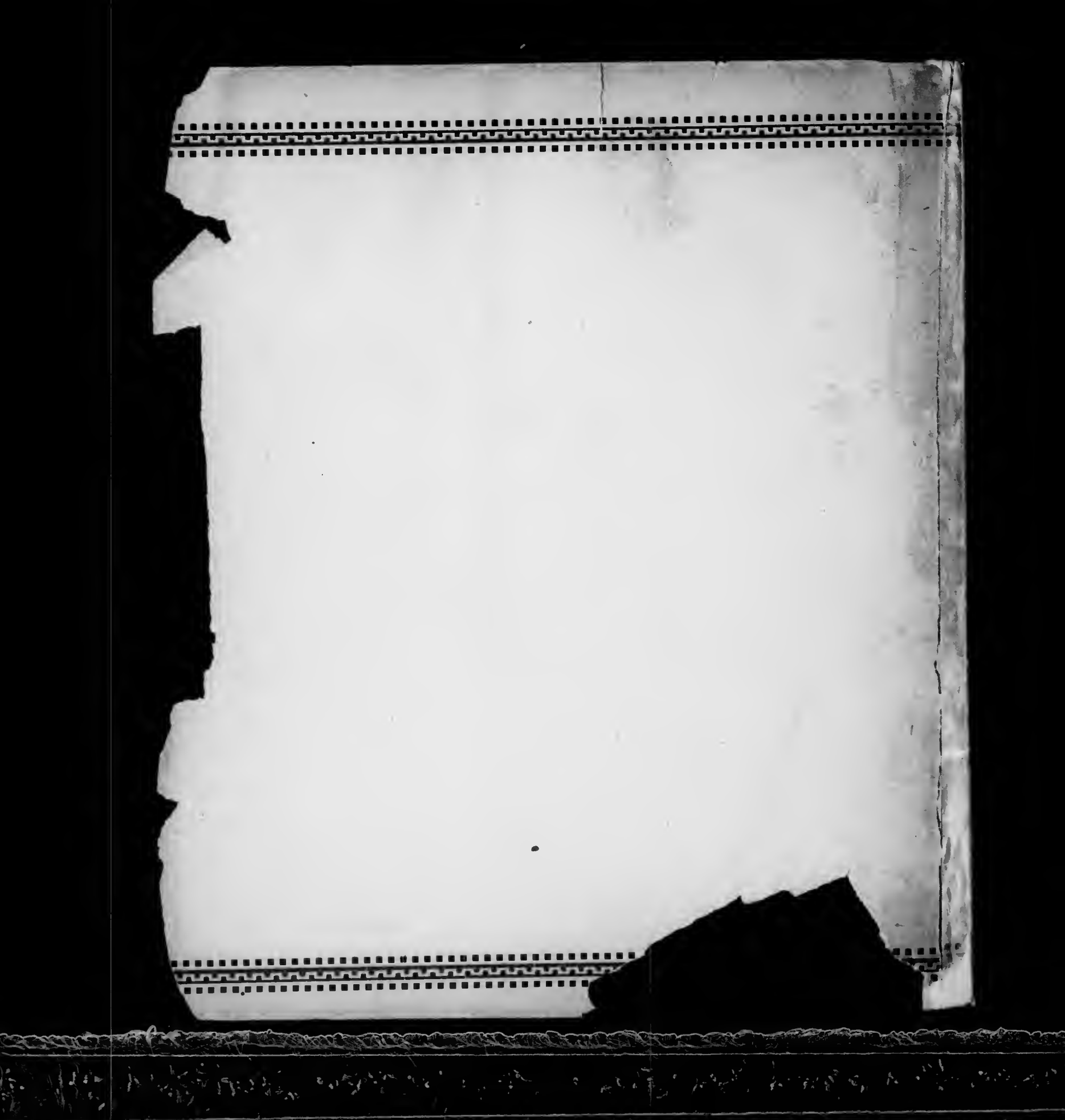
years to convince American jurists of so simple a truth as the unconstitutionality of that law, against which Blackstone, the Moses of English Common Law, raised doubts a hundred and forty years ago.

Every one who makes a discovery outside of his profession must be satisfied to forego immediate recognition. I am no lawyer by profession, and therefore, no doubt, I was ignored by the board of defense.

Not one of the many interested in the culmination of the case considered it worth while to move even a finger. Nevertheless the law in question *will be* declared unconstitutional.

And then, of course, it will be undeniable that the Court committed a *judicial murder*.

S. L. P. PRINTERY



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